

EXHIBIT B

UNITED STATES DISTRICT COURT

DISTRICT OF DELAWARE

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MAGTEN ASSET MANAGEMENT CORPORATION and
LAW DEBENTURE TRUST COMPANY OF NEW YORK,

Plaintiffs,

-vs-

NORTHWESTERN CORPORATION,

Defendant.

Civil Action No. C.A. No. 04-1494 (JJF)

----- X

MAGTEN ASSET MANAGEMENT CORP.,

Plaintiff,

-vs-

MICHAEL J. HANSON and ERNIE J. KINDT,

Defendants.

Civil Action No. C.S. No. 05-499 (JJF)

----- X

DATE: November 8, 2007

TIME: 9:00 a.m.

Deposition of ROBERT W. BERLINER, held
at the offices of Curtis, Mallet-Prevost, Colt &
Mosle, 101 Park Avenue, New York, New York,

1 - ROBERT W. BERLINER -
2 A. Yes.
3 Q. -- you've listed as a document that you
4 reviewed creditors' First Amended Complaint dated
5 October 4th, 2004.
6 Do you recognize this as that First
7 Amended Complaint?
8 A. Yes.
9 Q. When did you review the Complaint for
10 the first time?
11 A. In either August or September of this
12 year.
13 Q. Who provided you with a copy of the
14 Complaint?
15 A. Mr. Holmes and Mr. Schwitter.
16 Q. Did you have any discussions with
17 Mr. Holmes or Mr. Schwitter regarding the contents
18 of the Amended Complaint --
19 A. No.
20 Q. -- at that time?
21 Did you ever have any conversations with
22 those two individuals regarding the content of this
23 Complaint?
24 A. I did not.
25 Q. Did you ever have a conversation with

25

1 - ROBERT W. BERLINER -
2 any attorneys representing the plaintiffs in this
3 action regarding this Complaint?
4 A. No, sir.
5 Q. I'd like to refer your attention to
6 Page 10 of the Complaint, Paragraph 51.
7 Do you have that, sir?
8 A. Yes, I do.
9 Q. It states, "The debtor was insolvent
10 both immediately before and immediately after the
11 acquisition of MPLLC and the assumption of related
12 liabilities. Debtor was engaged in a business with
13 unreasonably small capitalization and incurred
14 debts beyond its ability to pay both immediately
15 before and immediately after the acquisition of
16 MPLLC and the assumption of liabilities."
17 Sir, do you understand that the debtor
18 referred to in this paragraph is Northwestern
19 Corporation, the defendant in this case?
20 MR. KAPLAN: Rather than asking the
21 question, it's defined up front. I'd rather have
22 the witness look at the definition.
23 MR. PIZZURRO: That's fine. I just want
24 his understanding.
25 A. That's my understanding, yes.

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1 - ROBERT W. BERLINER -
2 Q. Do you recall, reviewing this paragraph
3 of the Complaint, when you looked at the Complaint?
4 A. Yes.
5 Q. Were you ever asked to offer an opinion
6 regarding the allegations contained in this
7 paragraph?
8 A. No.
9 Q. Did you ever consider an opinion
10 regarding the allegations contained in this
11 paragraph?
12 A. No.
13 Q. Was there ever any discussion that you
14 had either with your colleagues or with any
15 attorneys representing the plaintiffs concerning
16 the allegations contained in this paragraph?
17 MR. KAPLAN: Object to the form.
18 A. I think the answer is yes.
19 Q. Okay. And what -- with whom did you
20 have that -- those discussions, conversations or
21 conversation?
22 A. With Mr. Holmes and Mr. Schwitter.
23 Q. When did you have those conversations or
24 conversation?
25 A. In August or September of this year.

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1 - ROBERT W. BERLINER -
2 Q. Do you recall whether it was more than
3 one conversation?
4 A. It was one conversation.
5 Q. What was said? What did you say and
6 what did they say, to the best of your
7 recollection, in that conversation?
8 A. The essence of the conversation was that
9 they communicated to me that counsel had asked us
10 to opine, as I have in the fourth opinion on Page 4
11 of my report, based on a hypothetical assumption
12 that Clark Fork remained directly obligated for the
13 QUIPS following the going flat transactions.
14 Q. Sir, let me -- you do understand that
15 the issue in Paragraph 51 is the solvency of
16 Northwestern Corporation; do you not?
17 A. Yes.
18 Q. Can you explain to me, then, the
19 relationship between that allegation and Opinion
20 Number 4?
21 MR. KAPLAN: Objection to form.
22 A. Yes.
23 Q. Please, could you explain?
24 A. In reading the deposition transcripts in
25 the case, a lot of the testimony had to do with the

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1 - ROBERT W. BERLINER -
 2 going flat transaction, the insolvency issues and
 3 those kinds of things. And I raised the question
 4 with my colleagues, you know, much of the testimony
 5 is seemingly irrelevant to the opinions that we're
 6 going to be expressing in our report and isn't that
 7 an odd situation for us?
 8 And it was then that I learned that
 9 the only way that we were going to even remotely
 10 address any of those was by offering the opinion I
 11 referred to based on the hypothetical assumption.
 12 Q. Let's look at Opinion Number 4. Okay.
 13 It states, "Assuming that Clark Fork remained
 14 directly obligated for the QUIPS, following the
 15 November 15th, 2002, going flat transaction, its
 16 total liabilities would have materially exceeded
 17 its total assets."
 18 Can you explain to me how that opinion
 19 relates to the solvency or insolvency of
 20 Northwestern before or after the going flat
 21 transaction?
 22 MR. KAPLAN: Asked and answered.
 23 A. The relationship -- obviously, it
 24 doesn't relate. The relationship, in my mind,
 25 was -- it was the linkage as to how -- how come I

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1 - ROBERT W. BERLINER -
 2 wasn't going to address the issues related to the
 3 going flat transaction and the solvency or
 4 insolvency of Northwestern that for some reasons,
 5 that were apparently legal reasons, counsel had
 6 restricted my attention to just this particular
 7 hypothetical assumption and that's the linkage.
 8 Q. So you understood -- am I correct that
 9 you understood that counsel was specifically not
 10 asking you to opine regarding the solvency of
 11 Northwestern?
 12 MR. KAPLAN: Object to the form.
 13 A. Not because they said that in so many
 14 words but because this is all that I was asked to
 15 do, so obviously I wasn't asked to address the
 16 solvency of Northwestern.
 17 Q. Did you question that in the
 18 conversation that we're now referring to that you
 19 had with your colleagues, did you question why you
 20 were not being asked to offer an opinion regarding
 21 solvency or insolvency of Northwestern?
 22 A. Yes.
 23 Q. What did they tell you?
 24 A. They told me that this isn't our area of
 25 expertise and that may have been a reason why we

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1 - ROBERT W. BERLINER -
 2 weren't asked to address it. But I never did find
 3 out by conversations with counsel as to the reason
 4 or not.
 5 This was what I was asked to do. It was
 6 relatively easy to do it, and so I felt somewhat
 7 delighted that this is all I had to do because I
 8 was concerned about being able to render my report
 9 by the 19th of September.
 10 Q. What else was discussed regarding the
 11 allegations in this paragraph, Paragraph 51 of the
 12 Amended Complaint, during the conversation we're
 13 referring to?
 14 A. Nothing else.
 15 Q. You testified a moment ago that in that
 16 conversation you remarked that much of what you had
 17 read in the deposition testimony seemed to be
 18 irrelevant to the issues that you were being asked
 19 to opine on.
 20 Do you recall saying that?
 21 A. Yes.
 22 Q. Why did you feel that way?
 23 A. Because I wasn't being asked to express
 24 any opinions such as the ones you've asked me about
 25 relating to the solvency or insolvency of

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1 - ROBERT W. BERLINER -
 2 Northwestern or any of the ramifications relating
 3 to the going flat transaction.
 4 Q. You did rely, however -- strike that.
 5 Your report reflects that you did review
 6 deposition transcripts taken in this case, correct?
 7 A. Correct.
 8 Q. Did you view those as irrelevant to any
 9 of the opinions that you've offered in this case?
 10 A. No.
 11 Q. Okay. But irrelevant to Opinion
 12 Number 4, is that what I understand; is that
 13 correct?
 14 MR. KAPLAN: Object to form.
 15 A. Yes.
 16 MS. DELANEY: Are you expecting any
 17 males to join us? There is apparently a
 18 Mr. Schwartz here to join the deposition. Does
 19 anyone know who he is?
 20 Q. Off the record.
 21 (Whereupon, there was a brief recess in
 22 the proceedings.)
 23 Q. Mr. Berliner, prior to your retention by
 24 Fried, Frank and Storch Amini in this case, had you
 25 ever been employed by Magten Asset Corporation?

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1 - ROBERT W. BERLINER -
2 Q. When did you learn of them in this case?
3 A. Well, I would have understood there to
4 exist such standards but the first time, I guess,
5 that I saw them in that particular terminology was
6 when I read the expert reports of the experts on
7 behalf of defendants in this case.
8 Q. So that -- strike that.
9 Is it, therefore, safe to assume that
10 informing the opinions and in preparing your
11 report, which is Exhibit 1, that you did not refer
12 to or use any of the Uniform Standards of
13 Professional Appraisal Practice?
14 MR. KAPLAN: Object to the form.
15 A. It's fair to say that.
16 MR. PIZZURRO: Maybe take five minutes.
17 (Whereupon, there was a brief recess in
18 the proceedings.)
19 Q. Mr. Berliner, you referred to three
20 instances in which you participated in a SFAS 142
21 impairment analysis.
22 Do you recall that testimony?
23 A. Yes.
24 Q. You referred to years 2005, 2006 and
25 2007.

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1 - ROBERT W. BERLINER -
2 As I recall, 2007 is this case, that's
3 what you're referring to; is that right?
4 A. And the second one covered both 2006 and
5 '07.
6 Q. So, am I correct in understanding that
7 the work you did in 2006 with respect to a
8 142 goodwill impairment analysis is work that
9 relates to this litigation?
10 A. No.
11 Q. I'm sorry. Did it relate to a
12 litigation?
13 A. Yes.
14 Q. Did you offer an opinion as an expert in
15 this litigation?
16 A. No.
17 Q. The work that you performed in 2005, was
18 that also in connection with a litigation?
19 A. Yes, sir.
20 Q. Did you offer an opinion in that
21 litigation?
22 A. I did.
23 Q. What was the name of that case? Do you
24 recall the name of the case?
25 A. Let me see if I can get it from -- the

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1 - ROBERT W. BERLINER -
2 name of the case was the Huff Alternative Income
3 Fund LP against PriceWaterhouseCoopers LLP.
4 Q. Is that the case which is listed at
5 Page B2 of Exhibit B to your report?
6 A. Yes, sir.
7 Q. What was -- were you representing
8 plaintiff or the defendant in that case?
9 A. The plaintiff.
10 Q. Was there a judgment or verdict in that
11 case?
12 A. I believe that case settled.
13 Q. Sir, do you remember the name of the
14 case you testified to in 1992 where there was a
15 successful disqualification motion made with
16 respect to your participation?
17 MR. KAPLAN: Object to the form.
18 A. I refer to it as the Interfund case, but
19 I don't think that was the exact name of the case,
20 so I don't recall the exact name of the case.
21 Q. What court was that case?
22 A. I don't recall.
23 Q. Do you recall the state?
24 A. No.
25 Q. Do you recall the name of the case --

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1 - ROBERT W. BERLINER -
2 the second case that you referred to, which I
3 believe was 1993, in which a disqualification
4 motion was made?
5 A. Yes. It was a class action case
6 involving the Republic Bank, maybe the First
7 Republic Bank. I don't remember the exact name
8 of -- Texas, not New York.
9 Q. Do you recall what court that was in?
10 A. Yes. It was a court in Texas.
11 Q. Do you recall whether --
12 A. Dallas, I believe. I believe federal
13 court in Dallas.
14 Q. Earlier, if you recall, we were
15 discussing a discussion you had with your
16 colleagues regarding the allegations in
17 Paragraph 51 of the Complaint.
18 Do you recall that testimony?
19 A. Not in the Complaint in this litigation,
20 but the First Amended Complaint.
21 Q. Yes, sir, the First Amended Complaint.
22 A. Yes, sir.
23 Q. Do you remember that testimony?
24 A. Yes.
25 Q. Sir, do you recall whether or not either

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